

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

CR 11-57-GF-BMM-JTJ

Plaintiff,

**FINDINGS AND
RECOMMENDATIONS**

vs.

AUSTIN JOSEPH DENNY,

Defendant.

I. Synopsis

Defendant Austin Joseph Denny (Denny) has been accused of violating the conditions of his supervised release. Denny admitted the alleged violations. Denny should be placed in custody for 6 months, with no supervised release to follow.

II. Status

Denny was found guilty of Simple Assault and Assault with a Dangerous Weapon on January 5, 2012, following a jury trial. (Doc. 137). The Court sentenced Denny to 54 months of custody, followed by 3 years of supervised release. (Doc. 201). Denny's current term of supervised release began on February 22, 2019. (Doc. 338 at 3).

Petition

The United States Probation Office filed a Petition requesting that the Court revoke Denny's supervised release on April 11, 2019. (Doc. 338). The Petition alleged that Denny had violated the conditions of his supervised release: 1) by using methamphetamine; 2) by failing to report for substance abuse testing; and 3) by failing to complete successfully a program of substance abuse treatment.

United States District Judge Brian M. Morris issued a warrant for Denny's arrest on April 11, 2019. (Doc. 339).

Initial appearance

Denny appeared before the undersigned for his initial appearance on April 30, 2019. Denny was represented by counsel. Denny stated that he had read the petition and that he understood the allegations. Denny waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation Hearing

The Court conducted a revocation hearing on April 30, 2019. Denny admitted that he had violated the conditions of his supervised release: 1) by using methamphetamine; 2) by failing to report for substance abuse testing; and 3) by failing to complete successfully a program of substance abuse treatment.

Denny's supervised release violations are Grade C violations. Denny's criminal history category is III. Denny's underlying offense is a Class C felony. Denny could be incarcerated for up to 24 months. He could be ordered to remain on supervised release for up to 23 months and 20 days, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 5 to 11 months.

III. Analysis

Denny's supervised release should be revoked. Denny should be incarcerated for 6 months, with no supervised release to follow. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Denny that the above sentence would be recommended to Judge Morris. The Court also informed Denny of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Denny that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Denny stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court FINDS:

That Austin Joseph Denny violated the conditions of his supervised release by using methamphetamine, by failing to report for substance abuse testing, and by failing to complete successfully a program of substance abuse treatment.

The Court RECOMMENDS:

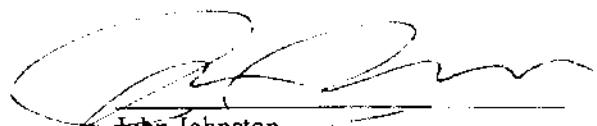
That the District Court revoke Denny's supervised release and commit him to the custody of the United States Bureau of Prisons for a term of 6 months, with no supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a

district court judge.

DATED this 1st day of May, 2019.



John Johnston
United States Magistrate Judge